



# Focus

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## SEPA rule amendments relating to statutory exemptions

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The Department of Ecology is proposing to amend the State Environmental Policy Act (SEPA) rules (WAC 197-11) to clarify that the “statutory exemptions” adopted by the legislature in RCW 43.21C are not subject to the requirements of WAC 197-11-305. These amendments are needed to make Ecology’s SEPA rules consistent with Washington’s SEPA statute, RCW 43.21C, that exempts specific proposed actions from SEPA environmental review.

### What are “statutory exemptions”?

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Some types of projects or governmental actions are exempt from the requirements of SEPA review by statute. The “statutory exemptions” are contained in RCW 43.21C. In addition to the “statutory exemptions” contained in SEPA, the legislature directed Ecology in RCW 43.21C.110(1)(a) to specify *by rule* particular categorical exemptions that would not require SEPA review. The legislature provided that these “categorical rule exemptions” are to be “limited to those types of governmental actions which are not major actions significantly affecting the quality of the environment.” However, the legislature also directed that the rules “shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review.” The “categorical rule exemptions” are contained in Part Nine of the SEPA rules. The criteria for determining when the exception to the exemption applies are contained in WAC 197-11-305.

### Why are the amendments needed?

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When Ecology adopted the SEPA rules in 1984, the “statutory exemptions” contained in RCW 43.21C were included within the list of “categorical rule exemptions” in Part Nine of the SEPA rules. This has resulted in the “statutory exemptions” being subject to the provisions of WAC 197-11-305 requiring SEPA review in certain prescribed circumstances. This is inconsistent with legislation contained in RCW 43.21C providing that otherwise statutorily exempt actions are not subject to environmental review under SEPA.

There is currently pending in Thurston County Superior Court a challenge to the validity of WAC 197-11-305 as it applies to Class I, II, and III forest practices. The legislature has statutorily exempted Class I, II, and III forest practices from SEPA review under RCW 43.21C.037 and RCW 76.09.050(1). However, the inclusion of Class I, II, and III forest practices in Ecology’s SEPA rules (WAC 197-11-800(25)) have made them subject to the provisions of WAC 197-11-305. The purpose of Ecology’s proposed amendments are to clarify that the “statutory exemptions” in RCW 43.21C, including Class I, II, and III forest practices, are not subject to the provisions of WAC 197-11-305.

## **Relation to previous rule-making efforts**

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In 1998, Ecology began comprehensively reviewing the “categorical rule exemptions” in Part Nine of the SEPA rules. Other government agencies and the public were asked to identify possible additions, deletions and changes to the “categorical rule exemptions.” Suggested changes were reviewed and advisory committees established to evaluate the suggestions in more detail. However, this review process was not completed because agency resources were shifted to higher-priority activities.

The current rule-making will focus only on the “statutory exemptions” and their relation to WAC 197-11-305. Suggested changes to “categorical rule exemptions” will not be considered.

## **Proposed Schedule**

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November 2002 ····· Draft rule amendments

December/January 2002 ····· Circulate proposed rule amendments for review

January/February 2003 ····· Public hearing

April/May 2003 ····· Adopt rule amendments

## **Where can I get more information?**

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Additional information will be available on the Internet at  
<http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

You also may contact:

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